



Reprinted
April 6, 2005

ENGROSSED HOUSE BILL No. 1063

DIGEST OF HB 1063 (Updated April 5, 2005 3:39 pm - DI 69)

Citations Affected: IC 32-24; IC 36-7.

Synopsis: Eminent domain for commercial uses. Provides that the state or a political subdivision may not transfer any interest in property acquired by eminent domain to another person for commercial use unless: (1) there is a substantial likelihood that the acquisition of the property will promote the opportunity for employment or create business opportunities; and (2) the property is in a blighted area. Defines "blighted area" as an area in which normal development and occupancy are undesirable or impossible due to: (1) deterioration; (2) obsolescence; (3) substandard structures; or (4) the vacancy or abandonment of a significant percentage of the property in the area.

Effective: July 1, 2005.

Wolkins, Heim, Bottorff
(SENATE SPONSORS — BRAY, LANANE)

January 6, 2005, read first time and referred to Committee on Judiciary.
February 14, 2005, amended, reported — Do Pass.
February 17, 2005, read second time, amended, ordered engrossed.
February 18, 2005, engrossed.
February 22, 2005, read third time, passed. Yeas 67, nays 29.

SENATE ACTION

February 24, 2005, read first time and referred to Committee on Judiciary.
March 31, 2005, amended, reported favorably — Do Pass.
April 5, 2005, read second time, amended, ordered engrossed.

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EH 1063—LS 6323/DI 69+



Reprinted
April 6, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1063

A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 32-24-1-3.5 IS ADDED TO THE INDIANA CODE
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2005]: **Sec. 3.5. (a) This section does not apply to:**
4 (1) a public utility (as defined in IC 8-1-2-1);
5 (2) a municipally owned utility (as defined in IC 8-1-2-1);
6 (3) a joint agency (as defined in IC 8-1-2.2-2);
7 (4) a rural electric membership corporation formed under
8 IC 8-1-13-4;
9 (5) a rural telephone cooperative corporation formed under
10 IC 8-1-17;
11 (6) a not-for-profit utility (as defined in IC 8-1-2-125);
12 (7) a board of aviation commissioners established under
13 IC 8-22-2;
14 (8) an airport authority established under IC 8-22-3;
15 (9) a railroad; or
16 (10) an entity that owns or operates a pipeline that carries
17 natural gas, crude oil or any of its constituents, refined

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products, or hazardous liquids.

(b) As used in this section, "any interest" includes the right to own, lease, sublease, transfer, or exchange a part of a property to be condemned.

(c) As used in this section, "commercial use" means a use that does not relate directly to providing a governmental service or fulfilling a governmental responsibility. The term includes the following:

(1) Private residential development or use of the property.

(2) Private development of the property under a lease.

(3) Use of the property for retail or industrial purposes.

(d) The state or a political subdivision may not transfer any interest in property acquired by eminent domain to another person for commercial use unless:

(1) there is a substantial likelihood that the acquisition and transfer of the property will:

(A) promote or retain the opportunity for gainful employment; or

(B) create business opportunities; and

(2) the property is or is located within a blighted area (as defined in IC 36-7-1-3(b)).

SECTION 2. IC 32-24-1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) If the person seeking to acquire the property does not agree with the owner of an interest in the property or with the guardian of an owner concerning the damages sustained by the owner, the person seeking to acquire the property may file a complaint for that purpose with the clerk of the circuit court of the county where the property is located.

(b) The complaint must state the following:

(1) The name of the person seeking to acquire the property. This person shall be named as the plaintiff.

(2) The names of all owners, claimants to, and holders of liens on the property, if known, or a statement that they are unknown. These owners, claimants, and holders of liens shall be named as defendants.

(3) The use the plaintiff intends to make of the property or right sought to be acquired. **If the plaintiff intends to transfer the property to another person for a commercial use, the complaint must specifically state:**

(A) that the plaintiff intends to transfer the property to another person for commercial use; and

(B) that the intended commercial use is permissible under

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section 3.5 of this chapter.

(4) If a right-of-way is sought, the location, general route, width, and the beginning and end points of the right-of-way.

(5) A specific description of each piece of property sought to be acquired and whether the property includes the whole or only part of the entire parcel or tract. If property is sought to be acquired by the state or by a county for a public highway or by a municipal corporation for a public use and the acquisition confers benefits on any other property of the owner, a specific description of each piece of property to which the plaintiff alleges the benefits will accrue. Plats of property alleged to be affected may accompany the descriptions.

(6) That the plaintiff has been unable to agree for the purchase of the property with the owner, owners, or guardians, as the case may be, or that the owner is mentally incompetent or less than eighteen (18) years of age and has no legally appointed guardian, or is a nonresident of Indiana.

(c) All parcels lying in the county and required for the same public use, whether owned by the same parties or not, may be included in the same or separate proceedings at the option of the plaintiff. However, the court may consolidate or separate the proceedings to suit the convenience of parties and the ends of justice. The filing of the complaint and a lis pendens notice in any eminent domain action under this article constitutes notice of proceedings to all subsequent purchasers and persons taking encumbrances of the property, who are bound by the notice.

SECTION 3. IC 36-7-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. **(a) Except as provided in subsection (b), "blighted area" means an area in which normal development and occupancy are undesirable or impossible because of:**

- (1) lack of development;
- (2) cessation of growth;
- (3) deterioration of improvements;
- (4) character of occupancy;
- (5) age;
- (6) obsolescence;
- (7) substandard buildings; or
- (8) other factors that impair values or prevent a normal use or development of property.

(b) For purposes of IC 32-24-1-3.5, "blighted area" means an area in which normal development and occupancy are undesirable or impossible for one (1) or more of the following reasons:

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- 1 **(1) Deterioration of improvements.**
- 2 **(2) Obsolescence.**
- 3 **(3) Substandard buildings.**
- 4 **(4) A significant percentage of the property in the area is**
- 5 **vacant or abandoned.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1063, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 3, delete "This section applies to all property that is" and insert "**This section does not apply to:**

- (1) a public utility (as defined in IC 8-1-2-1);
- (2) a municipally owned utility (as defined in IC 8-1-2-1);
- (3) a joint agency (as defined in IC 8-1-2.2-2);
- (4) a rural electric membership corporation formed under IC 8-1-13-4;
- (5) a rural telephone cooperative corporation formed under IC 8-1-17;
- (6) a not-for-profit utility (as defined in IC 8-1-2-125);
- (7) a board of aviation commissioners established under IC 8-22-2;
- (8) an airport authority established under IC 8-22-3; or
- (9) a railroad."

Page 1, delete line 4.

Page 1, line 15, delete "Except as provided in subsection (e), eminent domain may" and insert "**The state or a political subdivision may use eminent domain to acquire property for commercial use or to transfer any interest in property to another person for commercial use only if the owner of the property has rejected an offer from the state or a political subdivision that is equal to at least the higher of the following amounts:**

- (1) One hundred fifty percent (150%) of the property's assessed value.
- (2) The average of three (3) appraisals of the property. One (1) of the appraisers shall be appointed by the state or political subdivision and one (1) by the property owner. These two (2) appraisers shall appoint a third appraiser. However, if they are unable to do so, each appraiser shall submit the names of three (3) appraisers to the circuit court for the county in which the property is located and the court shall appoint the third appraiser from the names submitted."

Page 1, delete lines 16 through 17.

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Delete page 2.

and when so amended that said bill do pass.

(Reference is to HB 1063 as introduced.)

FOLEY, Chair

Committee Vote: yeas 7, nays 5.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1063 be amended to read as follows:

Page 1, line 14, delete "or".

Page 1, line 15, delete "." and insert "; or

(10) an entity that owns or operates a pipeline that carries natural gas, crude oil or any of its constituents, refined products, or hazardous liquids."

(Reference is to HB 1063 as printed February 15, 2005.)

WOLKINS

HOUSE MOTION

Mr. Speaker: I move that House Bill 1063 be amended to read as follows:

Page 2, line 9, after "may" insert "**not**".

Page 2, line 10, delete "commercial" and insert "**public**".

Page 2, line 10, delete "or".

Page 2, line 11, delete "only if" and insert "**unless**".

(Reference is to HB 1063 as printed February 15, 2005.)

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SENATE MOTION

Madam President: I move that Senator Lanane be added as cosponsor of Engrossed House Bill 1063.

BRAY

 COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred House Bill No. 1063, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 13, after "use" insert "**or**".

Page 2, line 14, delete "the owner" and insert ":

(1) there is a substantial likelihood that the acquisition and transfer of the property will:

(A) promote or retain the opportunity for gainful employment; or

(B) create business opportunities; and

(2) the property is or is located within a blighted area (as defined in IC 36-7-1-3(b))."

Page 2, delete lines 15 through 27, begin a new paragraph and insert:

"SECTION 2. IC 32-24-1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) If the person seeking to acquire the property does not agree with the owner of an interest in the property or with the guardian of an owner concerning the damages sustained by the owner, the person seeking to acquire the property may file a complaint for that purpose with the clerk of the circuit court of the county where the property is located.

(b) The complaint must state the following:

(1) The name of the person seeking to acquire the property. This person shall be named as the plaintiff.

(2) The names of all owners, claimants to, and holders of liens on the property, if known, or a statement that they are unknown. These owners, claimants, and holders of liens shall be named as defendants.

(3) The use the plaintiff intends to make of the property or right sought to be acquired. **If the plaintiff intends to transfer the property to another person for a commercial use, the complaint must specifically state:**

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(A) that the plaintiff intends to transfer the property to another person for commercial use; and

(B) that the intended commercial use is permissible under section 3.5 of this chapter.

(4) If a right-of-way is sought, the location, general route, width, and the beginning and end points of the right-of-way.

(5) A specific description of each piece of property sought to be acquired and whether the property includes the whole or only part of the entire parcel or tract. If property is sought to be acquired by the state or by a county for a public highway or by a municipal corporation for a public use and the acquisition confers benefits on any other property of the owner, a specific description of each piece of property to which the plaintiff alleges the benefits will accrue. Plats of property alleged to be affected may accompany the descriptions.

(6) That the plaintiff has been unable to agree for the purchase of the property with the owner, owners, or guardians, as the case may be, or that the owner is mentally incompetent or less than eighteen (18) years of age and has no legally appointed guardian, or is a nonresident of Indiana.

(c) All parcels lying in the county and required for the same public use, whether owned by the same parties or not, may be included in the same or separate proceedings at the option of the plaintiff. However, the court may consolidate or separate the proceedings to suit the convenience of parties and the ends of justice. The filing of the complaint and a lis pendens notice in any eminent domain action under this article constitutes notice of proceedings to all subsequent purchasers and persons taking encumbrances of the property, who are bound by the notice.

SECTION 3. IC 36-7-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. **(a) Except as provided in subsection (b), "blighted area" means an area in which normal development and occupancy are undesirable or impossible because of:**

- (1) lack of development;
- (2) cessation of growth;
- (3) deterioration of improvements;
- (4) character of occupancy;
- (5) age;
- (6) obsolescence;
- (7) substandard buildings; or
- (8) other factors that impair values or prevent a normal use or development of property.

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(b) For purposes of IC 32-24-1-3.5, "blighted area" means an area in which normal development and occupancy are undesirable or impossible for one (1) or more of the following reasons:

- (1) Deterioration of improvements.
- (2) Obsolescence.
- (3) Substandard buildings.
- (4) A significant percentage of the property in the area is vacant or abandoned."

and when so amended that said bill do pass.

(Reference is to HB 1063 as reprinted February 18, 2005.)

BRAY, Chairperson

Committee Vote: Yeas 10, Nays 0.

SENATE MOTION

Madam President: I move that Engrossed House Bill 1063 be amended to read as follows:

Page 2, line 12, delete "use eminent".

Page 2, line 13, delete "domain to acquire property for public use or to".

Page 2, line 14, after "property" insert "**acquired by eminent domain**".

(Reference is to EHB 1063 as printed April 1, 2005.)

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